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Estate Tax–Tenancy by the Entirety (Tyler v. U.S., 281 U.S. 497 (1930))

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TAX COMMENT

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ESTATE TAX—TENANCY BY THE ENTIRETY.—Husband and wife became possessed of real and personal property as tenants by the entirety in 1917. On the death of the husband, the property was considered part of the gross estate in computing the Federal estate tax. Deceased's administrator sued to recover the tax so paid on the grounds, (a) that it was a direct tax, without apportionment, and therefore invalid as it (b) constituted a deprivation of property without due process of law. *Held*, that since the surviving spouse acquired the rights of sole proprietorship, the property was validly included for purpose of taxation. *Tyler v. U. S.*, 281 U. S. 497, 50 Sup Ct. 356 (1930).

Under the common law joint tenants constituted a unit in legal contemplation so that neither tenant could dispose of any part of the estate without the consent of the other.¹ On the other hand, the husband had the right to control and dispose of all the profits of the property and he could convey the land to divest the wife of possession during his life, and even to vest a good estate in a grantee, provided he survived his wife.² As long as there was an accrual of benefit to the survivor at the death of the husband the imposition of the tax was proper.³ Since the power of taxation is an essential arm of all government, legal technicalities should not deter the assessment. There is no doubt that death became the "generating source" of definite accession of property rights to the survivor.⁴ The Court in this case, mindful of the device employed for tax avoidance, met the issue squarely. From the point of view of a previous decision,⁵ the complete change of the Court's position in interpreting the tax statute is a welcomed one, and it indicates the awakening of the Court to modes of tax evasion, together with an interpretation that will not frustrate the apparent intention of the Legislature.

W. H. S.

¹ *United States v. Provident Trust Co.*, 33 F. (2nd) 724 (C. C. A., 4th, 1929); see (Note) (1930) 18 Cal. L. Rev. 302.

² 1 *Tiffany Real Estate* (1920), 652.

³ *Reinecke v. Trust Co.*, 278 U. S. 339, 49 Sup. Ct. 123 (1929).

⁴ *Sutherland, J.*, at 559.

⁵ *May v. Heiner*, 281 U. S. 238, 50 Sup. Ct. 286 (1930); see Note (1930) 5 St. John's L. Rev. 147.